

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3606 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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PORT OFFICER

Versus

SHANKARBHAI MEDUBHAI MEVADA C/O VASANTBHAI PAMNANI

Appearance:

1. Special Civil Application No. 3606 of 2001
MS SEJAL K MANDAVIA for Petitioner No. 1
MR DHARMESH V SHAH for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/05/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. Dharmesh V. Shah, learned advocate for the respondent workman. In the facts and circumstances of the case and with the consent of both the learned advocates, the matter is

taken up for final hearing today itself.

By way of this petition, the petitioner has challenged two orders passed by the labour court concerned, one is the order passed in Reference No. 327 of 1993 dated 11th June, 1997. Said order has been passed by the labour court Bhavnagar in absence of the petitioner and is, thus, an ex parte order whereunder the labour court has ordered for reinstatement of the respondent workman with continuity of service with full back wages for the intervening period. Thereafter, the petitioner has filed application for setting aside the ex parte award being Miscellaneous Application No. 2 of 1998 wherein the labour court has rejected the said application alongwith an application for condonation of delay by order dated 22nd September, 2000. Thus, the order dated 22nd September, 2000 passed by the labour court on Misc. Application NO.2 of 1998 is the another order under challenge in this petition. According to the petitioner, the respondent was appointed on the post of Seaman and worked for more than one year. His services were terminated w.e.f.30.8.1992 against which the respondent preferred reference before the labour court wherein aforesaid award has been passed by the labour court. Initially, special civil application no. 7554 of 1997 was filed by the petitioner before this Court which was withdrawn by the petitioner on 21.1.1998 with a view to approach the labour court for setting aside the ex parte award and then preferred aforesaid miscellaneous application which came to be rejected by the labour court on 22.9.2000 and, therefore, has filed this petition challenging aforesaid two orders.

Learned advocate Mr. Dharmesh Shah appearing for the respondent workman has consented for setting aside both the orders passed by the labour court with a request to remand the matter to the labour court Bhavnagar and meanwhile for directing the petitioner to reinstate the respondent workman in service without prejudice to the rights and contentions of the petitioner before the labour court.

Learned advocate Ms. Sejal Mandavia for the petitioner has made a statement before this Court that the petitioner Board is prepared to reinstate the respondent workman without prejudice to the rights and contentions of the Board before the Labour Court and subject to the ultimate result of the reference before the labour court.

In view of the submissions made by the learned

advocates for the parties and also considering the consent given by Mr. Dharmesh Shah, learned advocate for the respondent workman and the statement made by Ms. Mandavia, learned advocate for the petitioner, without entering into the merits of the matter, award in question dated 11th June, 1997 passed by the labour court concerned in Reference No. 327 of 1993 as well as the order of the labour court dated 22nd September, 2000 passed by the labour court in Miscellaneous Application No. 2 of 1998 both are required to be quashed and set aside.

Accordingly, this petition is allowed. The award in question dated 11th June, 1997 passed by the labour court concerned in Reference No. 327 of 1993 as well as the order of the labour court dated 22nd September, 2000 passed by the labour court in Miscellaneous Application No. 2 of 1998 both are hereby to be quashed and set aside and the matter is remanded to the labour court, Bhavnagar being Reference No. 327 of 1993 with a direction to the labour court to decide the said reference in accordance with law within six months from the date of receipt of copy of this order after giving reasonable opportunity to the parties before it. The petitioner is directed to reinstate the respondent in service within fifteen days from the date of receipt of copy of this order. It is clarified that the said reinstatement of the respondent workman shall be without prejudice to the rights and contentions of the petitioner and also subject to the ultimate award that may be made by the labour court pursuant to this remand. Labour court concerned is further directed to decide the aforesaid reference within the aforesaid schedule in accordance with law after ascertaining that the petitioner has reinstated the respondent in service in terms of this Court's directions. Parties to the present proceedings are directed to extend their positive cooperation for expeditious disposal of the reference within the schedule as aforesaid.

Learned advocate Mr. Shah has submitted that while issuing notice, this court has directed the petitioner to deposit an amount of Rs.2,000.00 by way of costs for the respondent workman which has already been deposited by the petitioner before this Court and the same is lying in the registry of this Court. He has, therefore, urged that the said amount may now be ordered to be paid to the respondent by account payee cheque drawn in favour of the respondent workman.

Considering the submissions made by Mr. Shah, it

is directed to the Registry of this Court to pay an amount of Rs.2,000.00 (Rs. two thousand only) to the respondent workman which has been deposited by the petitioner before this Court in view of the order passed by this Court while issuing notice to the respondent, by way of account payee cheque drawn in favour of the respondent workman as per the name of the respondent as mentioned in the award in question and to hand over the same to the learned advocate Mr. Shah for the respondent workman.

Rule is made absolute in terms indicated hereinabove with no order as to costs.

1.5.2002. (H.K. Rathod, J.)

Vyas